



General Assembly

February Session, 2016

Raised Bill No. 5567

LCO No. 2602



Referred to Committee on BANKING

Introduced by:
(BA)

AN ACT CONCERNING ALTERNATIVES TO FORECLOSURES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective from passage*) For purposes of this section
2 and sections 2 to 6, inclusive, of this act:

3 (1) "Mortgage" has the same meaning as provided in section 49-24a
4 of the general statutes, as amended by this act;

5 (2) "Mortgagee" has the same meaning as provided in section 49-24a
6 of the general statutes, as amended by this act;

7 (3) "Mortgagor" has the same meaning as provided in section 49-24a
8 of the general statutes, as amended by this act;

9 (4) "Residential real property" has the same meaning as provided in
10 section 49-24a of the general statutes, as amended by this act;

11 (5) "Senior lien" means the first security interest placed upon a
12 property to secure payment of a debt or performance of an obligation
13 before one or more junior liens;

14 (6) "Junior lien" means a security interest placed upon a property to
15 secure payment of a debt or performance of an obligation after a senior
16 lien is placed on such property;

17 (7) "Lienholder" means a person who holds a security interest in real
18 property;

19 (8) "Underwater mortgage" means a mortgage where the debt
20 associated with such mortgage, along with any senior lien, exceeds the
21 fair market value of the mortgaged property as determined by a court
22 in accordance with sections 4 and 5 of this act.

23 Sec. 2. (NEW) (*Effective from passage*) Notwithstanding any provision
24 of the general statutes, any underwater mortgage on residential real
25 property may be modified, and the value increased, without the
26 consent of the holders of junior encumbrances and without loss of
27 priority for the full amount of the loan modified, provided such
28 modification is approved by the court through entry of judgment of
29 loss mitigation in accordance with sections 3 to 5, inclusive, of this act.

30 Sec. 3. (NEW) (*Effective from passage*) A mortgagor of an underwater
31 mortgage may elect to transfer the subject property to a mortgagee in
32 satisfaction of the mortgagor's obligation to the mortgagee by agreeing
33 to transfer such property in a record executed by both parties. Any
34 transfer agreement shall: (1) Transfer to the mortgagee all interests in
35 the property except for the interests reserved to the mortgagor in the
36 transfer agreement or the interests held by more senior mortgagees or
37 lienholders; (2) discharge the mortgage; (3) terminate any other interest
38 in the property subordinate to that of the lienholder party to the
39 transfer agreement; and (4) be conditioned on a court's entry of a
40 judgment of loss mitigation under sections 4 and 5 of this act.

41 Sec. 4. (NEW) (*Effective from passage*) A mortgagee or mortgagor may
42 file a motion for judgment of loss mitigation following a modification
43 under section 2 of this act or execution of an agreement under section 3
44 of this act. Upon motion of the mortgagee or mortgagor and with the

45 consent of the counterparty, the court, after notice and hearing, may
46 render a judgment of loss mitigation approving the modification or
47 transfer. Such judgment shall be a final judgment for purposes of
48 appeal. The only issues at such hearing shall be (1) a finding of the fair
49 market value of the residential property, which may be determined by
50 an appraisal, conducted by a court-appointed disinterested real estate
51 appraiser, (2) a finding of the fair market value of any priority liens on
52 such property, (3) the mortgagor's debt, (4) whether the mortgage is an
53 underwater mortgage, and (5) whether the contemplated transaction
54 was agreed to in good faith and for the purposes of mitigation the
55 losses such mortgagor and mortgagee would incur through a
56 judgment of foreclosure. If the court renders a judgment of loss
57 mitigation, immediately after the expiration of any applicable appeal
58 period or after the disposition of such an appeal that affirms the
59 judgment, then either, as applicable (A) the mortgage held by the
60 mortgagee shall be increased as contemplated in such judgment and
61 any junior lienholder's lien shall be deemed subordinated to such
62 mortgage, in the same order as existed prior to the subordination, or
63 (B) the transfer contemplated in the transfer agreement shall be
64 effectuated. The mortgagor and mortgagee shall, thirty days after the
65 modification or transfer, submit the judgment of loss mitigation to the
66 town clerk for recording in accordance with title 7 of the general
67 statutes.

68 Sec. 5. (NEW) (*Effective from passage*) If the court does not enter a
69 judgment of loss mitigation, then the modification or transfer
70 contemplated by the mortgagor and mortgagee under section 2 or 3 of
71 this act shall not be consummated. In the event of such nonentry, (1)
72 the mortgagor may, if eligible, petition for inclusion in the foreclosure
73 mediation program set forth in sections 49-31k to 49-31o, inclusive, of
74 the general statutes, provided the mortgagor did not substantially
75 contribute to the events leading to such denial and the court (A) gives
76 consideration to any testimony or affidavits the parties submit in
77 support of or in opposition to such petition, and (B) finds that (i) such

78 petition is motivated primarily by a desire to delay entry of a judgment
79 of foreclosure, and (ii) it is highly probable the parties will reach an
80 agreement through mediation, and (2) the mortgagee shall have the
81 right to request the entry of a judgment of foreclosure in accordance
82 with the other provisions of law, including the provisions governing
83 strict foreclosure.

84 Sec. 6. (NEW) (*Effective from passage*) Nothing in sections 2 to 5,
85 inclusive, of this act shall be construed as eliminating the debt or any
86 judgment associated with an affected junior lien.

87 Sec. 7. Subsection (a) of section 49-24b of the general statutes is
88 repealed and the following is substituted in lieu thereof (*Effective from*
89 *passage*):

90 (a) On and after January 1, 2015, a mortgagee who desires to
91 foreclose upon a mortgage encumbering residential real property of a
92 mortgagor shall give notice to the mortgagor by registered or certified
93 mail, postage prepaid, at the address of the residential real property
94 that is secured by such mortgage, in accordance with the relevant
95 notice provisions of this chapter and chapter 134. No such mortgagee
96 may commence a foreclosure of a mortgage prior to mailing such
97 notice. Such notice shall advise the mortgagor of his or her
98 delinquency or other default under the mortgage and that the
99 mortgagor has the option to contact the mortgagee to discuss whether
100 the property may, by mutual consent of the mortgagee and mortgagor,
101 be marketed for sale pursuant to a listing agreement established in
102 accordance with section 49-24d. Such notice shall also advise the
103 mortgagor (1) of the mailing address, telephone number, facsimile
104 number and electronic mail address that should be used to contact the
105 mortgagee; (2) of a date not less than sixty days after the date of such
106 notice by which the mortgagor must initiate such contact, with
107 contemporaneous confirmation in writing of the election to pursue
108 such option sent to the designated mailing address or electronic mail
109 address of the mortgagee; (3) that the mortgagor should contact a real

110 estate agent licensed under chapter 392 to discuss the feasibility of
111 listing the property for sale pursuant to the foreclosure by market sale
112 process; (4) that, if the mortgagor and mortgagee both agree to proceed
113 with further discussions concerning an acceptable listing agreement,
114 the mortgagor must first permit an appraisal to be obtained in
115 accordance with section 49-24c for purposes of verifying eligibility for
116 foreclosure by market sale; (5) that the appraisal will require both an
117 interior and exterior inspection of the property; (6) that the terms and
118 conditions of the listing agreement, including the duration and listing
119 price, must be acceptable to both the mortgagee and mortgagor; (7)
120 that the terms and conditions of any offer to purchase, including the
121 purchase price and any contingencies, must be acceptable to both the
122 mortgagor and mortgagee; (8) that if an acceptable offer is received,
123 the mortgagor will sign an agreement to sell the property through a
124 foreclosure by market sale; and (9) in bold print and at least ten-point
125 font, that if the mortgagor consents to a foreclosure by market sale, the
126 mortgagor will not be eligible for foreclosure mediation in any type of
127 foreclosure action that is commenced following the giving of such
128 consent. The notice provided under this subsection may be combined
129 with and delivered at the same time as any other notice required by
130 subsection (a) of section 8-265ee or federal law. If the mortgagor and
131 mortgagee by their mutual consent choose to enter into discussions
132 regarding the possibility of marketing the property pursuant to a
133 listing agreement established in accordance with section 49-24d, at any
134 point subsequent to the commencement of a foreclosure action,
135 nothing in this section, sections 1 to 6, inclusive, of this act or section
136 49-24e, as amended by this act, shall be construed as prohibiting the
137 parties from entering into such listing agreement.

138 Sec. 8. Subsections (a) and (b) of section 49-24e of the general
139 statutes are repealed and the following is substituted in lieu thereof
140 (*Effective from passage*):

141 (a) If a mortgagor executes a listing agreement that is acceptable to
142 both the mortgagee and mortgagor pursuant to section 49-24d and

143 receives an offer to purchase the residential real property that
144 encompasses a price, terms and conditions that are acceptable to both
145 the mortgagor and the mortgagee, the mortgagor shall execute a
146 contract for sale with the purchaser that shall reflect the agreed-upon
147 price, terms and conditions and be contingent upon the completion of
148 the foreclosure by market sale in accordance with sections 49-24 to 49-
149 24g, inclusive, as amended by this act, and sections 49-26 to 49-28,
150 inclusive, [and 49-31t.] If an offer is received, but is unacceptable to
151 the mortgagee, the mortgagee shall provide the mortgagor with
152 written notice of its decision and, without limiting the breadth of its
153 discretion, a general explanation of the reason or reasons for such
154 decision. Such notice shall not be required in instances where the offer
155 is unacceptable to the mortgagor. The mortgagor shall, not later than
156 five days after the date of the execution of the purchase and sale
157 contract, provide the mortgagee with a copy of such contract along
158 with written documentation, in a form and substance acceptable to the
159 mortgagee, evidencing the mortgagor's consent to the filing of a
160 motion for judgment of foreclosure by market sale.

161 (b) Unless otherwise prohibited by applicable law, not later than
162 thirty days after the receipt of such contract and the documentation
163 evidencing consent, or not later than thirty days after the satisfaction
164 or expiration of any contingencies in the contract that must either have
165 been satisfied or expired before the foreclosure action may be
166 commenced to consummate the sale, whichever thirty-day time frame
167 is later, the mortgagee shall commence a foreclosure by writ, summons
168 and complaint. Any such complaint shall claim, in the prayer for relief,
169 a foreclosure of the mortgage pursuant to sections 49-24 to 49-24g,
170 inclusive, as amended by this act, and sections 49-26 to 49-28,
171 inclusive, [and 49-31t,] and shall contain a copy of the contract between
172 the mortgagor and the purchaser as well as a copy of the appraisal
173 obtained pursuant to section 49-24c. If the mortgagee commenced a
174 foreclosure action prior to the time of such receipt, satisfaction or
175 expiration, then, not later than thirty days after the most recent receipt,

176 satisfaction or expiration, the mortgagee shall make a motion for
177 judgment of foreclosure by market sale in accordance with the
178 provisions of section 49-24f and attach the contract and appraisal to the
179 motion. No mortgagee may require the employ or use of a particular
180 list of persons licensed under chapter 392 as a condition of approval of
181 an offer. No mortgagee may require the use of an auction or other
182 alternative method of sale as a condition of approval of an offer once
183 the listing agreement required pursuant to section 49-24d has been
184 executed by the mortgagor. Nothing in this section shall be construed
185 as requiring either the mortgagee or mortgagor to approve any offer
186 that is made pursuant to this section.

187 Sec. 9. Section 49-24 of the general statutes is repealed and the
188 following is substituted in lieu thereof (*Effective from passage*):

189 All liens and mortgages affecting real property may, on the written
190 motion of any party to any suit relating thereto, be foreclosed (1) by a
191 decree of sale instead of a strict foreclosure at the discretion of the
192 court before which the foreclosure proceedings are pending, or (2)
193 with respect to mortgages, as defined in section 49-24a, as amended by
194 this act, that are a first mortgage against the property, by a judgment of
195 foreclosure by market sale upon the written motion of the mortgagee,
196 as defined in section 49-24a, as amended by this act, and with consent
197 of the mortgagor, as defined in section 49-24a, as amended by this act,
198 in accordance with sections 49-24a to 49-24g, inclusive, as amended by
199 this act, and sections 49-26 to 49-28, inclusive. [, and 49-31t.]

200 Sec. 10. Section 49-24a of the general statutes is repealed and the
201 following is substituted in lieu thereof (*Effective from passage*):

202 For purposes of a foreclosure by market sale in accordance with this
203 section [,] and sections 49-24b to 49-24g, inclusive, as amended by this
204 act. [, and section 49-31t:]

205 (1) "Mortgage" means a mortgage deed, deed of trust or other
206 equivalent consensual security interest on residential real property

207 securing a loan made primarily for personal, family or household
208 purposes that is first in priority over any other mortgages or liens
209 encumbering the residential real property, except those liens that are
210 given priority over a mortgage pursuant to state or federal law;

211 (2) "Mortgagee" means the owner or servicer of the debt secured by
212 a mortgage;

213 (3) "Mortgagor" means the owner-occupant of residential real
214 property located in this state who is also the borrower under the loan
215 that is secured by a mortgage, other than a reverse annuity mortgage,
216 encumbering such residential real property that is the primary
217 residence of such owner-occupant, where the amount due on such
218 mortgage loan, including accrued interest, late charges and other
219 amounts secured by the mortgage, when added to amounts for which
220 there is a prior lien by operation of law, exceeds the appraised value of
221 the property; and

222 (4) "Residential real property" means a one-to-four-family dwelling
223 occupied as a residence by a mortgagor.

224 Sec. 11. Subsection (b) of section 49-24b of the general statutes is
225 repealed and the following is substituted in lieu thereof (*Effective from*
226 *passage*):

227 (b) At any time after the date provided in the notice required under
228 subsection (a) of this section, the foreclosure of the mortgagor's
229 mortgage may continue without any further restriction or requirement,
230 provided the mortgagee files an affidavit with the court stating that the
231 notice provisions of said subsection have been complied with and that
232 either the mortgagor failed to confirm his or her election in accordance
233 with said subsection by the date disclosed in the notice or that
234 discussions were initiated, but (1) the mortgagee and mortgagor were
235 unable to reach a mutually acceptable agreement to proceed; (2) based
236 on the appraisal obtained pursuant to section 49-24c, the property does
237 not appear to be subject to a mortgage that is eligible for foreclosure by

238 market sale; (3) the mortgagor did not grant reasonable interior access
 239 for the appraisal required by section 49-24c; (4) the mortgagee and
 240 mortgagor were unable to reach an agreement as to a mutually
 241 acceptable listing agreement pursuant to section 49-24d; (5) a listing
 242 agreement was executed, but no offers to purchase were received; (6)
 243 an offer or offers were received, but were unacceptable to either or
 244 both the mortgagee and mortgagor; or (7) other circumstances exist
 245 that would allow the mortgagee or mortgagor to elect not to proceed
 246 with a foreclosure by market sale pursuant to sections 49-24 to 49-24g,
 247 inclusive, as amended by this act, and sections 49-26 to 49-28,
 248 inclusive, [and 49-31t,] or that would otherwise make the mortgage
 249 ineligible for foreclosure by market sale. The affidavit required by this
 250 subsection may be combined with the affidavit required by subsection
 251 (b) of section 8-265ee.

252 Sec. 12. Section 49-31t of the general statutes is repealed. (*Effective*
 253 *from passage*)

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section
Sec. 2	<i>from passage</i>	New section
Sec. 3	<i>from passage</i>	New section
Sec. 4	<i>from passage</i>	New section
Sec. 5	<i>from passage</i>	New section
Sec. 6	<i>from passage</i>	New section
Sec. 7	<i>from passage</i>	49-24b(a)
Sec. 8	<i>from passage</i>	49-24e(a) and (b)
Sec. 9	<i>from passage</i>	49-24
Sec. 10	<i>from passage</i>	49-24a
Sec. 11	<i>from passage</i>	49-24b(b)
Sec. 12	<i>from passage</i>	Repealer section

Statement of Purpose:

To facilitate alternatives to foreclosure that are mutually agreeable to mortgagors and mortgagees with senior encumbrances.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]